IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 7906 OF 2005

Dr. Prithi Paul Singh Sethi ....Applicant.

V/s

1. Kiran Gokuldas Kalantary
and Ors. ....Respondents.

Mr. Subhash Jha i/b M/s Law Global & Co. for the applicant.

Mr. A.P. Mundergai, Senior Counsel with Mr. Raj Baid for respondent Nos. 1 to 3.

Ms. S.D. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 10th April 2006

1. The applicant is challenging the order passed by the Sessions Court, Mumbai dated 21/11/2005 whereby, it allowed the anticipatory bail application which is filed by respondents and directed that in the event of the arrest of the respondents 1 to 3 herein, they may be released on bail.

2. The applicant filed a complaint with the Vakola Police Station, Santacruz (E) on 15/9/2005 against the respondent Nos. 1 to 3, alleging criminal breach of trust, cheating. In the complaint, it was alleged that the applicant came in contact with the 1st respondent and started buying second hand machineries

and generator etc. for his chemical plants from the respondents. He desired to set up a textile plant and was, therefore, interested in purchasing the second hand textile machinery, land, building, etc for setting up a textile unit. It is the case of the applicant that the respondent No.1 represented that he was a broker dealing in second hand textile machines and claimed that he had good contacts in various textile industries, spread all over the country. It is alleged that an agreement was executed between the applicant and the respondents wherein it was allegedly agreed that the respondents would act as the agent of the applicant and file tender for purchase of plant, machinery, land of Devagiri Textile Mills Limited, situated at J.S., MIDC Industrial Area, Aurangabad and that the entire amount for the purchase of the said plant, machinery and land would be paid by the applicant and after the respondents purchase the said plant, machinery and land the said unit would be transferred in favour of the present applicant and the respondents would charge commission of Rs 25 lakhs for rendering and performing the services as consultancy fee. It is alleged in the complaint that, accordingly, the tender was filled in by the respondents and the plant, machinery and land came to be auctioned in favour of the respondents and the

entire amount was paid by the present applicant towards the purchase of the said Devagiri Mills.

3. It is alleged that, however, after the property was auctioned in favour of respondent No.1, they refused to transfer the said Mill in favour of the applicant and took volte face and claimed that what was agreed between the parties was that the plant and machinery would be purchased by the applicant and not the entire Mill. It is alleged by the applicant that the value of the plant and machinery was not more than Rs 1.5 crores to Rs. 2 crores and there was no reason for the applicant to pay Rs 8 crores. It is submitted that respondent No.1, in breach of the written agreement, wanted to retain the land of Devagiri Mills and, therefore, had taken this stand which was contrary to the agreement.

4. The learned Counsel appearing on behalf of the applicant invited my attention to the various entries in the accounts to show that the entire amount had been paid to respondent No.1 and all the entries tallied with the payments which were made by respondent No.1 to the Textile Corporation. The learned Counsel invited my attention to the agreement which was executed between the parties. He submitted

that, therefore, this is a clear case of criminal breach of trust and cheating and, therefore, the Sessions Court had erred in granting an anticipatory bail to the respondents. He submitted that the Sessions Court had granted anticipatory bail on extraneous considerations which were not germane to the application for anticipatory bail. He relied upon number of judgments of the Supreme Court on the question of guidelines which have to be considered by the Court while considering the application for anticipatory bail.

5. The learned Counsel appearing on behalf of respondents 1 to 3 submitted that the alleged agreement which was executed between the applicant and the respondent No.1 was never executed and that the signature of the respondent No.1 was forged. He submitted that, therefore, there was no question of relying on the clauses in the said agreement. He submitted that the original agreement had not been produced and what was annexed to the application was a typed copy.

6. So far as the entries on which the reliance was placed by the learned Counsel for the applicant are concerned, the learned counsel for the respondents

submitted that what was agreed between the parties was that the plant and machinery would be purchased by the respondents on behalf of the applicant and that there were prior transactions in respect of plant and machinery between the parties and the said entries were in respect of those transactions. He submitted that this fact had been suppressed by the applicant from the court and in his complaint.

7. I have perused the copy of the agreement which is annexed to the application. The original agreement has not been produced by the applicant. Even otherwise the said agreement is illegal since it is clearly in breach of the provisions of the Prevention of Benami Transactions Act, 1985.

8. I have also perused the order of the Sessions Court. The Sessions Court has given cogent reasons why the applicants i.e. the respondents 1 to 3 herein have made out a case for grant of an anticipatory bail. The trial court has observed that there were rival claims between the applicant and the respondents and that essentially the dispute between the parties was of a civil nature. Further, the Sessions Court has observed that the respondents were ready to hand over the plant and machinery. Therefore, I do not see

any reason to interfere with the said order passed by the Sessions Court. Accordingly, the Criminal Application is dismissed.

9. Application is accordingly disposed of.

V.M. KANADE, J.